

Service Date: February 10, 2003

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

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IN THE MATTER of the Application of)	UTILITY DIVISION
NorthWestern Energy, LLC for Certain)	
Determinations Required by Subparagraph 32(c))	DOCKET NO. D2002.10.131
and (k)(2) of the Public Utility Holding Company)	ORDER NO. 6478
Act of 1935, Concerning Its Contract with)	
NorthWestern Energy, a Division of)	
NorthWestern Corporation (Montana Megawatts))	

ORDER ON RECONSIDERATION

Background

1. On October 24, 2002, NorthWestern Energy, LLC (NWE) made a filing with the Montana Public Service Commission (Commission) requesting certain determinations required by federal law, necessary for NWE to enter into a specific kind of transaction to purchase electricity from an affiliated electricity generator. The details of the filing were explained by NWE in the filing, and were summarized in the Commission's Notice of Application, Notice of Opportunity to Request Procedure, Notice of Intervention Deadline, issued November 8, 2002.

2. On December 17, 2002 the Commission issued a Notice of Commission Action Rejecting Filing; Notice of Opportunity to Refile. The Commission's reasons for rejecting the filing were procedural only. The Commission found that NWE's filing did not present a sufficient prima facie case to go forward with a contested case process. The Commission provided some guidance to NWE, and indicated NWE could refile, at its discretion. The deadline for requesting reconsideration of the action rejecting the filing was extended to December 31, 2002, by which time requests for reconsideration were filed by NWE and by certain officials and representatives from Cascade County, the City of Great Falls and the Great Falls community.

Discussion

3. NWE makes three arguments in its request for reconsideration: 1) NWE did make a prima facie case supporting the requested determinations; 2) the Commission imposed procedural requirements not imposed before; 3) the Commission action leaves NWE "in a quandary" over

Commission "policies and intentions with respect to the preapproval of default supply power purchase agreements." The Commission responds as follows.

4. First, it is arguable whether NWE made a prima facie case. The Commission's decision to reject was as much pragmatic as legal. NWE knows from long experience that making a filing in the usual format, using prefiled testimony explaining in detail the filing and supporting evidence, is the most efficient way for a contested case to proceed. In the absence of a thorough opening case presentation a great deal of unnecessary burden is placed on the Commission and intervenors to ferret out necessary evidence and explanation through data requests. While NWE's filing was not devoid of explanation and evidence, on balance the Commission found it should have been more thorough and specifically directed to the determinations required by federal law. The Commission reiterates the guidance it provided in its December 17, 2002 Notice.

5. Second, it is true that the Commission did not require this process in Docket No. D99.4.82 in which the Commission made findings after an expedited process similar to that recommended by NWE in this docket. It is not good administrative practice to arbitrarily use different process for similar filings. However, the Commission is not bound by its own procedural precedent. It may be the case that the Commission should have required a different process in Docket No. D99.4.82. The Commission asked for comments in that docket, but did not anticipate a hearing. No comments or requests for hearing were received. A hearing has been requested in this docket. The Commission finds that the process described in its December 17, 2002 Notice is necessary to make the determinations required under federal law.

6. Third, the December 17, 2002 Notice did not change the Commission's position on preapproval stated in Docket No. D2001.10.144, Order No. 6382d. The December 17, 2002 Notice was directed at a NWE filing requiring the Commission to make specific findings pursuant to federal law. A hearing was requested in response to the Notice of Application and the Commission needs a thorough record on which to make the substantive determinations required under federal law. The determinations required under federal law cannot be made until the substantive issues are resolved for the project in a default supply portfolio application. The process or processes will be determined when NWE files another application.

7. Regarding the filing made by the Great Falls interests in support of NWE's request for reconsideration, the Commission finds that the arguments do not provide a reason to grant NWE's motion.

Conclusions of Law

1. NWE is a public utility regulated by the Montana Public Service Commission.
2. Pursuant to federal law NWE cannot purchase electricity from an affiliated exempt wholesale generator without specific determinations having been made by this Commission.
3. The Commission can determine a lawful and appropriate process to make the decisions requested in this filing.

Order

The NWE Motion for Reconsideration of the Commission's December 9, 2002 action rejecting the NWE filing in this docket is denied.

Action was taken on January 9, 2003, by a vote of 4 to 1. The specific language of this Order was approved on February 7, 2003 by a vote of 3 to 2.

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BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

BOB ROWE, Chairman
Voting to Dissent on the 02/07/03 Motion

TOM SCHNEIDER, Vice Chairman

MATT BRAINARD, Commissioner

GREG JERGESON, Commissioner

JAY STOVALL, Commissioner
Voting to Dissent on Both Motions

ATTEST:

Rhonda J. Simmons
Commission Secretary

(SEAL)

NOTE: You may be entitled to judicial review in this matter. Judicial review may be obtained by filing a petition for review within thirty (30) days of the service of this order. Section 2-4-702, MCA.

DISSENTING OPINION OF COMMISSIONER ROWE

Dissenting Opinion of Commissioner RoweDocket No. D2002.10.131

I respectfully disagree with the approach outlined in paragraph 6, which concludes that the "Eligible Wholesale Generator" determination under federal law necessarily "cannot be resolved" until substantive issues in the default supply docket are resolved. This approach forecloses the determination which should in my opinion be the first subject of inquiry in the "EWG" filing. I do agree with the majority's goal, to move this matter forward as expeditiously as possible.

The Montana Commission's recommendation to the Federal Energy Commission concerning an Exempt Wholesale Generator determination will be made based on consideration of whether EWG status is consistent with the federal law considerations enumerated, including a public interest determination. In turn, a public interest determination is grounded in the specific statute being applied. NorthWestern Energy represented in this docket that the federal law determination could be fully cabined from subsequent evaluation of the default supply portfolio under state law. Whether or not this is possible is precisely the issue I have been increasingly desperate to hear addressed by the parties, including the Montana Consumer Counsel, since this case was initially filed last October. It is an issue I had fully expected to be joined, debated and resolved by this time.

RESPECTFULLY SUBMITTED this 7th day of February, 2003.

Bob Rowe, Chairman